U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 99 250 50816 Office: California Service Center Date: NOV 2000

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER: [redacted]

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INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a dental practice. It seeks classification of the beneficiary as a dental trainee for a period of 22 months. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The director also determined that the petitioner does not have the physical premises and enough sufficiently trained manpower to provide the training specified. The director decided that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country. The director also decided that the petitioner had not demonstrated that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed. Further, the director determined that the beneficiary already possessed substantial training and expertise in the proposed field of training. Finally, the director decided that the petitioner did not establish that the beneficiary will not engage in productive employment.

On appeal, counsel states that the Service erred in its finding that the proposed training is not sufficiently detailed.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

> (ii) *Evidence required for petition involving alien trainee--*(A) *Conditions.* The petitioner is required to demonstrate that:
>
> (1) The proposed training is not available in the alien's own country;
>
> (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
>
> (3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The petitioner's training program requires 22 months for completion. The petitioner wishes to provide the beneficiary with advanced training in a program covering cosmetic and restorative dentistry. Within the next two years, the petitioner intends to establish a dental center in Manila, Philippines and employ the beneficiary as chief dentist and manager.

The record indicates that the beneficiary is a doctor of dental medicine who graduated from the University of the Philippines in 1996. She was also licensed by the Dental Licensing Board in May 1996. The beneficiary also has several years of professional experience in the field of dentistry. She has worked as a dentist for two years with the Soledad Villasenor-Navarro dental office in Manila, Philippines and eight months with the Philippine General Hospital Department of Dental Dentistry completing an externship in oral surgery. Absent a detailed description of the beneficiary's employment history, the beneficiary may already have substantial training and expertise in the proposed field of training.

The petitioner explains that training in the knowledge of new techniques and technologies for restorative and cosmetic dentistry is not available in the Philippines. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the beneficiary may not be classified as a nonimmigrant trainee, in the absence of a showing that the training is not available in her own country and that the purported training is not essentially experience in repetition, review, and practical application of skills. See Matter of Frigon, 18 I&N Dec. 164 (Comm. 1981). No evidence has been presented that such training does not exist in the beneficiary's home country.

The petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The training program does not include the number of hours that will be spent in each course, who will be providing the training and the means by which the instructor(s) will be evaluating the trainee.

The petitioner states that the training program will be personally supervised by him, based on his individual experience and expertise in this practice area. The petitioner has not explained how he will be responsible for the beneficiary's overall supervision in a

program consisting of primarily **full-time practical (on-the-job) training**, including patient and product preparations, observation of dentistry procedures and maintenance for **35 hours a week**, and still be able to perform his duties as a dental surgeon. The petitioner has not shown that the beneficiary will not be engaged in productive employment beyond that necessary and incidental to the training. Further, the petitioner had not demonstrated that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed. Moreover, the petitioner has not established that the physical premises are suitable for such training and that it has enough sufficiently trained manpower to provide the training specified.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.